THE HON'BLE SRI JUSTICE V.ESWARAIAH

W.P.NO.8257 OF 2006

Dt.24.4.2006

Between:

Patlolla Kamala …Petitioner

And

Municipal Corporation of Hyderabad,

Rep. By its Commissioner, Hyderabad. …Respondent

ORDER:

Petitioner seeks to issue a writ of mandamus to declare the impugned notice issued by the respondent Corporation in letter No.76/TPS/C5/MCH/2006, dt.17.3.2006 as illegal and arbitrary.

Heard the learned counsel for the petitioner as well as the learned Standing Counsel appearing on behalf of the respondent Corporation.

The petitioner is in possession and enjoyment of the land in Municipal bearing No.8-3-224/1/1, Yousufguda, Hyderabad, admeasuring 396.66 sq.yards having purchased the same from one J.Bapu Reddy through registered sale deed bearing No.615/81 dated 31.3.1981. The petitioner applied for permission for construction of a new building and accordingly the respondent Corporation after satisfying all the formalities granted permission for construction of new building in the said land on 9.7.1996. As per the sanctioned plan, the petitioner left the entire ground floor for parking space to the residents of the house. The respondent Corporation has directed the petitioner to set back for about 15' x 50' i.e., about 84 sq.yards of the land and accordingly the petitioner left 84 sq.yards of the land for the purpose of future road widening and she has not claimed any compensation for the said left over land. While so, the respondent Corporation without issuing any show cause notice issued the impugned notice in letter No.76/TPS/C5/MCH/2006, dt.17.3.2006 under Section 636 of the Hyderabad Municipal Corporations Act, 1955 (for short 'the Act') stating that the petitioner has made constructions not covered by the sanctioned plan and converted parking space in Cellar floor/stilt floor for the purpose of shops/residential flat other than parking and carried out the said construction which is unauthorized and causing lot of inconvenience to the inmates in the building and also to the visitors of the building, resulting in vehicles being parked on the roads creating lot of traffic congestion, accidents and public nuisance and also that the High Court in *suo motu* contempt case in C.C.No.101 of 1996, dt.28.2.1996, ordered that steps be taken immediately for creation for parking areas with a view to reduce traffic congestion being created on account of cars being parked on roads for want of parking within the premises. Accordingly, the petitioner was directed to remove the said unauthorized structures within three days.

I am of the opinion that issuing notice under Section 636 of the Act in respect of the buildings, which have been constructed after obtaining permission for construction of the cellar, ground floor and upper

floors, is illegal and without jurisdiction. The relevant provision to issue a notice is under Section 452 of the Act. If that is the case, it is for the respondents to point out whether the petitioner has converted the parking place into shops. If there is any deviation or conversion, it is for the respondent Corporation to issue a show cause notice under Section 452 of the Act. But, without issuing any show cause notice, straight away a notice under Section 636 of the Act, as if the constructions have been made without any permission, has been issued directing the petitioner to remove the structures within three days, is illegal and without jurisdiction.

Having regard to the facts and circumstances of the case, the impugned notice in letter No.76/TPS/C5/MCH/2006,dt.17.3.2006, is directed to be treated as a show cause notice only permitting the petitioner to file a representation/explanation within one week from the date of receipt of a copy of this order and till such representation/ explanation is considered and appropriate orders are passed and communicated to the petitioner, the respondent Corporation shall not remove or demolish the premises of the petitioner.

The writ petition is accordingly disposed of. No costs.

V.ESWARAIAH, J.

24.4.2006

Note: Issue copy within two days

B.O.

kpr